CCRB INVESTIGATIVE RECOMMENDATION

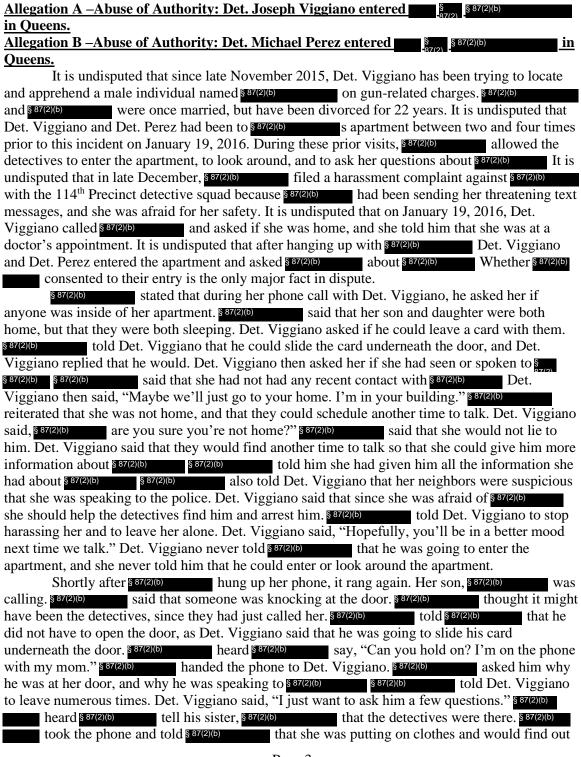
Investigator:		Team:	CCRB Case #:	☐ Force	☐ Discourt.	☐ U.S.
Erin Sweeney		Squad #9	201600489	✓ Abuse	O.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Precinct:	18 Mo. SOL	EO SOL
Tuesday, 01/19/2016 11:00 AM		§ 87(2)(b)		114	7/19/2017	7/19/2017
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Time	Received at CCI	RB
Tue, 01/19/2016 8:26 PM		CCRB	Call Processing System	Tue, 01/19	0/2016 8:26 PM	
Complainant/Victim	Type	Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			
1. DT3 Michael Perez	02470	930939	WARRSEC			
2. DT3 Joseph Viggiano	06676	919824	WARRSEC			
Officer(s)	Allegation			Investigator Recommendation		
A.DT3 Joseph Viggiano	Abuse: I § 87(2)(b)	Det. Joseph Viggiano en				
B.DT3 Michael Perez		Det. Michael Perez enter				

<u>Case Summary</u>
On January 19, 2016, at approximately 11:00 a.m., Det. Joseph Viggiano and Det.
Michael Perez of Brooklyn North Warrant Squad arrived at \$87(2)(6) s address, located at \$
, in Queens. Det. Viggiano and Det. Perez had been to this apartment at
least two times in the past two months because they had an arrest warrant for \$87(2)(b)
s former husband. \$87(2)(b) was not home when the detectives came to her
apartment, but her \$87(2)(b) -old daughter, \$87(2)(b) and \$87(2)(b) -old son, \$87(2)(b) were
home. § 87(2)(b) and § 87(2)(b) are on the lease of this apartment, along with § 87(2)(b)
alleged that Det. Viggiano and Det. Perez entered her apartment without consent
(Allegations A and B). Det. Viggiano and Det. Perez asked \$87(2)(b) if he had seen
said he had not. Det. Viggiano and Det. Perez left the apartment. No
one was arrested or issued a summons.
There is no video footage in this case.
§ 87(2)(g)
Mediation, Civil and Criminal Histories
• On February 4, 2016, mediation was presented to \$87(2)(b) during her interview. She
chose to pursue an investigation § 87(2)(b)
• On March 3, 2016, the New York City Comptroller's Office stated that no Notice of
Claim had been filed in regard to this incident (Board Review 11).
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
Civilian and Officer CCRB Histories
• This is the first CCRB complaint involving \$87(2)(b) or \$87(2)(b)
(Board Review 6).
• Det. Viggiano has been a member of service for 18 years. He has seven total cases with
ten total allegations. In case number 200607892, it was alleged that Det. Viggiano
entered the apartment without permission. The allegation was unsubstantiated. In case
number 201112326, an entry was alleged, and it was substantiated. Det. Viggiano
acknowledged entering an apartment with only an I-Card. The CCRB recommended that

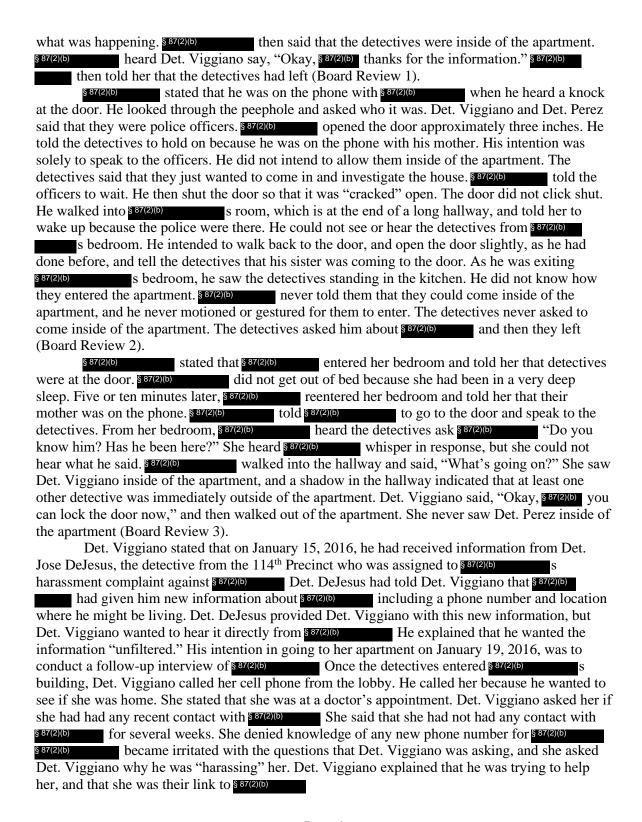
- at charges be brought against Det. Viggiano, while the NYPD recommended that he receive instructions. He ultimately received instructions. This is Det. Viggiano's only substantiated allegation. In case number 201204365, an entry was alleged, and it was closed as unsubstantiated. In case 201508621, an entry was alleged, and it was closed as exonerated (Board Reviews 8 and 16).
- Det. Perez has been a member of service for 13 years. He has eight total cases with 16 total allegations. In case number 200702612, a vehicle search was alleged, and it was substantiated. Charges were recommended by the CCRB, and the NYPD recommended that Det. Perez not be disciplined. This is his only substantiated allegation. In case number 201402123, two entry and search allegations were pleaded against him, and they were closed as exonerated (Board Review 7).

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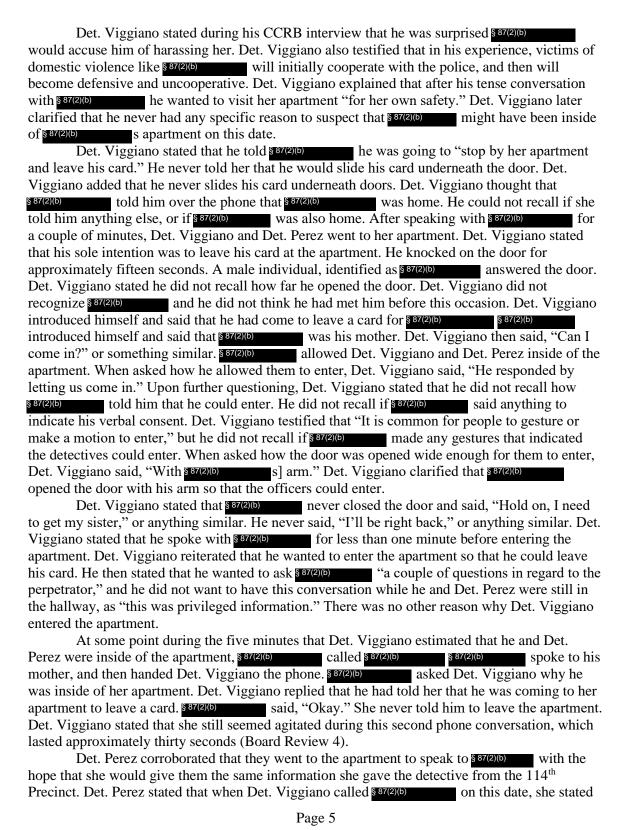
Findings and Recommendations



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that her daughter was home. She did not say that her son was also home. Det. Viggiano explained that he was going to knock on the door and leave a card at the apartment. §87(2)(b) this was fine. Det. Viggiano never told her that he would slide a card underneath her door. Det. Perez stated that warrant squad detectives never slide their cards underneath doors. Det. Perez could not hear what §87(2)(b) was saying to Det. Viggiano, so he did not know if she ever told him not to come to her apartment. Det. Viggiano never told Det. Perez that [3/97(2)(b)] told him not go to her apartment, or not to question her children. Det. Viggiano spoke to \$87(2)(b) for approximately two minutes. During the call, Det. Viggiano told her that she should not be "giving him a hard time" because they were trying to arrest \$87(2)(6) which would help her. On this date, Det. Perez had no specific reason to suspect that \$87(2)(b) was inside of s apartment. Det. Perez and Det. Viggiano went and knocked on the door of the apartment. After a few seconds, \$87(2)(b) came to the door. He appeared to be so or years old and seemed mentally competent. Det. Viggiano introduced himself and asked §87(2)(b) in and speak to him. They intended to question him. §87(2)(b) responded, "Sure, no problem," or something similar. He opened the door and stepped away from the door, allowing them to enter. At no point did he say, "Hold on, I need to get my sister," or anything similar. He never attempted to close the door, or closed the door, even slightly. At no point did he object to the detectives entering the apartment. A few seconds after the detectives entered the apartment, walked away from the kitchen and picked up the phone. He was speaking to § 87(2)(b) He told her that the detectives were inside of the apartment. Det. Viggiano said that he would speak to § 87(2)(b) and § 87(2)(b) handed him the phone. Det. Viggiano said to her, "I told you that I was going to leave a card at your apartment." To Det. Perez, it sounded like was not cooperating with Det. Viggiano. Det. Perez never heard §87(2)(b) Det. Viggiano to leave the apartment, and Det. Viggiano never told Det. Perez that she had told him to leave. § 87(2)(b) was walking around the apartment, and was never questioned. She never told the detectives to leave the apartment. Det. Viggiano handed \$87(2)(b) his card, and the detectives left. Det. Perez estimated that they were inside of the apartment for five minutes (Board Review 5). The police have the burden of establishing the existence, and the voluntariness, of

The police have the burden of establishing the existence, and the voluntariness, of consent Florida v. Bostick 501 U.S. 429, 438 (1991); People v. Keesler, 842 N.Y.S.2d 166 (2007) (Board Reviews 12 and 13). In addition, the background of the consenter, including age, is a factor to consider when determining the existence and voluntariness of the consent People v. Gonzalez 39 N.Y. 2d 127 (1976) (Board Review 15). Officers may enter an apartment when they have obtained voluntary consent from an individual who possesses the requisite degree of authority and control over the premises People v. Watson 101 A.D. 3d 913, 955 N.Y.S. 2d 411, N.Y. Slip Op. 08562 (Board Review 14). An individual who is a minor can provide valid consent to enter an apartment if the state can show 1) the minor shares the home with a nonconsenting parent who is not present at the time that the officers are requesting consent, 2) the officer believes that the minor and the parent has authority to allow the officers into the home, and 3) by clear and convincing evidence that the minor's consent was freely and voluntarily given under the totality of the circumstances Saavedra v. State (1993, Fla) 622 So 2d 952, 18 FLW S 317, cert den (US) 127 L Ed 2d 93 (Board Review 17).

§ 87(2)(g)

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§ 87(2)(g)				
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It is unc	disputed that \$87(2)(b) ccused him of harassing	became angry with Det. V her. § 87(2)(9)	iggiano during their phone	
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Squad: 9				
Investigator: _				
	Signature	Print	Date	
Squad Leader: _				
•	Title/Signature	Print	Date	
Reviewer:				
	Title/Signature	Print	Date	

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